

REMARKS

The present Office Action addresses claims 1-6, 8-12, and 14-16, however claims 4, 6, 11, and 15 are withdrawn from consideration. Remaining claims 1-3, 5, 8-10, 12, 14, and 16 stand rejected. Applicant respectfully requests reconsideration of the pending rejections in view of the remarks herein.

At the outset, Applicants thank Examiner Araj for extending the courtesy of a telephone interview to Applicant's undersigned representative on January 15, 2008. During the interview the Hayes references was discussed, however no agreement was reached.

Amendments to the Claims

Independent claim 1 is amended to include the limitations of claim 3, which is now cancelled, and to recite that the opposed legs define an opening therebetween having a central axis that is substantially parallel to the longitudinal axis of the proximal portion of the implant-gripping member. Claims 4, 5, and 8 are amended to depend from claim 1, rather than cancelled claim 3. Independent claim 12 is amended to clarify some the claim language, and to recite that the distal portion is u-shaped with opposed legs extends outward from the implant-gripping portion at the same axial height. Support for these amendments can be found throughout the specification and in the drawings. No new matter is added.

Rejections Pursuant to 35 U.S.C. §102

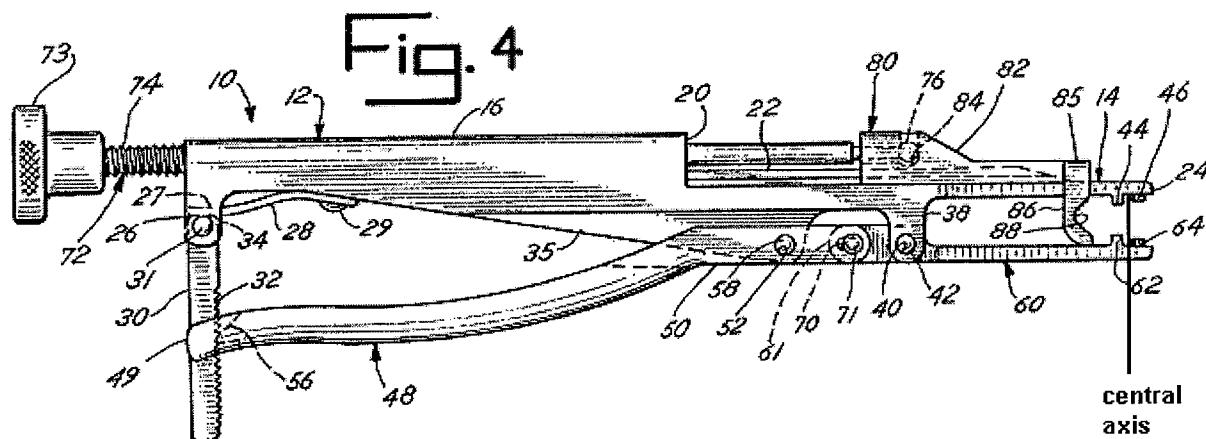
Claims 1-3, 5, 8-10, 12, 14, and 16 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,020,519 ("Hayes"). Applicant respectfully disagrees.

Claims 1-2, 5, and 8-10

Independent claim 1 recites, in part, an implant-gripping member having a u-shaped distal portion that extends in a direction substantially transverse to a longitudinal axis of a proximal portion of the implant-gripping member, and that includes opposed legs that are adapted to be positioned under a distal end of a rod-receiving member of a spinal implant. The opposed legs of the u-shaped distal portion define an opening therebetween having a central axis that is substantially parallel to the longitudinal axis of the proximal portion of the implant-gripping member. Hayes does not teach or even suggest an implant-gripping portion with opposed legs that extend transverse to a longitudinal axis of a

proximal portion of the implant-gripping member, and that are adapted to be positioned under a distal end of a rod-receiving member of a spinal implant. Hayes also fails to teach legs having a central axis that is substantially parallel to the longitudinal axis of the proximal portion of the implant-gripping member.

As shown in FIG. 4 of Hayes, which is reproduced below with markings, Hayes discloses two parallel jaws (14, 60), each having two protrusions (44, 46, 62, 64, respectively) formed on a distal, inner surface thereof for engaging a rod-receiving head of an implant therebetween. While the protrusions on both jaws extend generally transverse to a longitudinal axis of the jaws, only two protrusions one single jaw (e.g., protrusions 44 and 46 on jaw 14) could even be considered to be a u-shaped distal portion of an implant-gripping member. The protrusions (44, 46), however, are not configured to extend under a rod-receiving head of a spinal implant. In fact, due to the relatively short length of the protrusions, they could not possibly extend under any rod-engaging head of a spinal implant.



The protrusions also do not define an opening therebetween having a central axis that is substantially parallel to the longitudinal axis of the proximal portion of the implant-gripping member. The only possible central axis that could be defined by the opening formed between the protrusions is shown in FIG. 4, and as shown it extends transverse to the longitudinal axis of the jaw. The protrusions cannot define an opening with a central axis that extends parallel to the longitudinal axis of the jaw due to the longitudinally offset position of each protrusion on the jaw.

Claim 1, as well as claims 2, 5, and 8-10 which depend therefrom, therefore distinguish over Hayes and represent allowable subject matter.

Claims 12, 14, and 16

Independent claim 12 recite, in part, first and second components slidably coupled to one another and adapted for relative movement along a longitudinal sliding axis. The first component includes an implant-gripping portion offset from the sliding axis and a u-shaped distal portion having opposed legs that are adapted to be positioned under a distal end of a rod-receiving member of a spinal implant, and the second component includes a rod-engaging portion offset from the sliding axis and being adapted to engage a spinal rod to move the spinal rod toward the rod-receiving member of the spinal implant being engaged by the implant-gripping portion. Claim 12 further requires that the opposed legs of the u-shaped distal portion extend outward from the implant-gripping portion at the same axial height.

At the outset, as discussed above with respect to claim 1, the only portion of Hayes that could possibly be considered to form a u-shaped portion with opposed legs is the protrusions on a single jaw, (e.g., protrusions 24 and 44 on jaw 14). Thus, for the same reasons discussed above with respect to claim 1, claim 12 distinguishes over Hayes because the protrusions on one of the jaws of Hayes are not configured to extend under the rod-engaging head of any implant.

Claim 12 further distinguishes over Hayes because the protrusions on one of the jaws of Hayes do not extend outward from the jaw at the same axial height, as further required by claim 12. To the contrary, as shown in FIG. 4 of Hayes above, the protrusions are axially spaced apart from one another, i.e., one protrusion is at height higher up on the jaw than the other protrusion.

Claim 12, as well as claims 14 and 16 which depend therefrom, therefore distinguish over Hayes and represent allowable subject matter.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant's amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the

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undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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